



CANNON BUILDING  
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STATE OF DELAWARE  
**DEPARTMENT OF STATE**

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DIVISION OF PROFESSIONAL REGULATION

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| PUBLIC MEETING NOTICE: | <b>BOARD OF DENTISTRY &amp; DENTAL HYGIENE</b>  |
| DATE AND TIME:         | <b>Thursday, August 15, 2013 at 3:00 p.m.</b>   |
| PLACE:                 | <b>Cannon Building, Second-Floor Conference Room A<br/>861 Silver Lake Boulevard, Dover, DE 19904</b> |
| APPROVED:              | <b>October 24, 2013</b>   |

**MEMBERS PRESENT**

Blair Jones, DMD, Professional Member, President  
John Lenz, DDS, Professional Member, Secretary  
Lucinda Bunting, DMD, Professional Member  
Thomas A. Mercer, DMD, Professional Member  
Joan Madden, RDH, Professional Hygiene Member (departed meeting at 5:25 p.m.)  
Debra Bruhl, RDH, Hygiene Advisory Member  
Bonnie Thomas, RDH, Hygiene Advisory Member  
Nathaniel Gibbs, Public Member

**MEMBERS ABSENT**

Brian McAllister, DDS, Professional Member  
Buffy Parker, RDH, Hygiene Advisory Member  
Cheryl Calicott-Trawick, Public Member

**DIVISION STAFF/DEPUTY ATTORNEY GENERAL PRESENT**

Amanda McAtee, Administrative Specialist II  
Jennifer Singh, Deputy Attorney General

**PUBLIC PRESENT**

Bonnie Foster

**CALL TO ORDER**

Dr. Jones called the meeting to order at 3:10 p.m.

**REVIEW AND APPROVAL OF MINUTES**

The Board reviewed the minutes of the June 20, 2013 Board meeting. Mr. Gibbs made a motion, seconded by Dr. Lenz, to approve the minutes as presented. By unanimous vote, the motion carried.

**UNFINISHED BUSINESS**

**Presentation on Child Abuse CE Recommendation – Dr. Sharon Welsh**

Dr. Jones stated that Dr. Welsh was leaving as chair and would like the new chair to proceed with the recommendation. Dr. Bunting stated that she liked the CPR card idea for tracking the CE course. Dr. Mercer stated that he liked the idea as well but someone would need to be privately brought into the office for the course unless the society was going to provide the course. Dr. Jones agreed with the CE course on child abuse but the course should be provided through the various dental societies.

Dr. Jones felt that an extra mandate may not be the way to go. Ms. Bruhl stated that by law they were supposed to report abuse. Ms. Singh stated that the Board's objective was to protect the public. Ms. Madden stated that this was a subject that as professionals they were trained to report on and that it was important but not necessary to mandate it. Dr. Lenz suggested to table the topic until Dr. Welsh's successor came to answer the Board's questions. Ms. Thomas stated that too many mandates would become cumbersome to keep track of. Ms. Singh questioned if anyone supported the course as a mandatory requirement. Mr. Gibbs questioned if anyone received this as part of their education or training. Dr. Jones stated that he did receive some training on the subject during his residency program. Ms. Thomas stated that they supported the course but just not as a mandate. After discussion, Ms. Bruhl made a motion, seconded by Dr. Bunting, to not mandate a continuing education course on child abuse. By unanimous vote, the motion carried.

#### Status of Dental Legislation

Dr. Jones stated that Bill 96, Provisional License Bill, passed the Senate and the House and had been signed by the Governor on August 5, 2013. Also, Bill SB 114 w/SA 3, which created chaperone requirements for the treatment and examination of minors, also passed and was signed by the Governor on August 6, 2013. Ms. Singh questioned if the Board felt the need for any clarifying regulations to govern SB 96. Dr. Jones stated that the Board had discussed possibly sun setting this Bill in the future to determine if it was necessary, although that should have been written in the Bill. Ms. McAtee stated that there was a discussion about defining the supervision. Dr. Jones stated that the supervision was further defined in the final draft of the Bill, no further regulations were needed.

#### **Proposal to Deny Hearing – Bonnie Foster 3:30 p.m.**

#### **PROPOSAL TO DENY HEARING – BONNIE FOSTER 3:30 p.m.**

**BOARD PRESENT:** Dr. Blair Jones, Dr. John Lenz, Dr. Lucinda Bunting, Dr. Thomas A. Mercer, Joan Madden, Debra Bruhl, Bonnie Thomas, Nathaniel Gibbs

**PRESIDING:** Dr. Blair Jones, President

**BOARD STAFF:** Amanda McAtee, Administrative Specialist II

**DEPUTY ATTORNEY GENERAL FOR THE BOARD:** Jennifer Singh

**RESPONDENT:** Bonnie Foster

**COUNSEL FOR THE RESPONDENT:** pro se

**PUBLIC PRESENT:** None

**COURT REPORTER PRESENT:** Kim Hurley, Wilcox and Fetzer

**TIME STARTED:** 3:30 p.m.

Ms. Singh went on record at 3:30 p.m. The Board members introduced themselves for the record. Ms. Singh stated that the Board proposed to deny licensure for Bonnie Foster because the Board determined that her application did not meet the statutory requirements of 24 *Del. C.* § 1122(c)(4) and 24 *Del. C.* § 1122(d).

Ms. Singh stated that under 24 *Del. C.* § 1122(c) (4), a criminal conviction substantially related to the practice of dental hygiene is a basis to deny an application. According to Ms. Foster's criminal background check, she was convicted of possession of heroin in the state of New Jersey in January, 2001. Under Board Rule 11.6, possession of heroin was a crime substantially related to the practice of dental hygiene. However, the Board could issue a waiver of the conviction under 24 *Del. C.* § 1122(c)(4):

"After a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of a majority of the quorum, may waive this paragraph (c)(4), if it finds all of the following:

- a. For waiver of a felony conviction, more than 5 years have elapsed since the date of the conviction. At the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.
- b. For waiver of a misdemeanor conviction or violation, at the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.
- c. The applicant is capable of practicing dentistry or dental hygiene in a competent and professional manner.
- d. The granting of the waiver will not endanger the public health, safety or welfare.
- e. The applicant has not been convicted of a felony sexual offense."

Ms. Singh stated that under 24 *Del. C.* § 1122(d) "[w]here the Board has found to its satisfaction that an applicant has been intentionally fraudulent, or that false information has been intentionally supplied, the Board shall deny the application and report its findings to the Attorney General for further action." In this instance, the Board found that Ms. Foster's letter addressing her criminal history was not entirely forthright as it omitted any mention of the above listed New Jersey conviction. If the Board determined that Ms. Foster was intentionally fraudulent or intentionally supplied false information, they must deny her application.

Ms. Singh marked Ms. Foster's application including supporting documentation and correspondence as Board Exhibit One.

Pursuant to 29 *Del. C.* § 10131(c) Ms. Foster requested a hearing, to attempt to demonstrate to the Board that she qualified for a waiver of her criminal conviction, that she was not intentionally fraudulent, and that she did not intentionally supply the Board with fraudulent information.

Ms. Foster was sworn in by Ms. Hurley.

Ms. Foster stated that she did not list the New Jersey conviction on her application because so much time had passed, she honestly forgot about it, and the charge had not come up for any jobs that she had applied for. When she first applied for a dental hygiene license she did state the New Jersey

conviction in 2002. Ms. Foster recently learned that she could apply for an expungement for the heroin conviction in 2014. Ms. Foster stated that she really wanted to continue with her life and that she had worked hard to put her past behind her. Ms. Foster explained that she had to wait six or seven years for the Delaware pardon. After her dental hygiene license was denied in 2002 she worked as a dental assistant for Dr. Harris. Ms. Foster apologized to the Board for not listing the New Jersey conviction in her application and in her letter to the Board, she honestly forgot about the conviction and did not intend to mislead the Board.

Dr. Jones questioned what year Ms. Foster graduated. Ms. Foster stated that she graduated in 2002 and passed all Board exams that year.

Dr. Jones questioned if Ms. Foster had completed any continuing education credits since graduating. Ms. Foster stated that she had not but that she would be willing to do anything as far as continuing education. Ms. Singh stated that the Board could grant Ms. Foster a license contingent on Ms. Foster completing continuing education if Ms. Foster agreed to those terms.

Ms. Thomas questioned if Ms. Foster completed a drug treatment program

Ms. Foster stated that it had been seven years since she used heroin and that she had completed a drug treatment program quite some time ago.

The Board went off record at 3:45 p.m. to deliberate.

After deliberation, the Board went back on record at 4:14 p.m.

Dr. Lenz made a motion, seconded by Ms. Bruhl, to approve a waiver for Ms. Foster's heroin conviction, and that the Board found Ms. Foster was not intentionally fraudulent, and that she did not intentionally supply the Board with fraudulent information. Ms. Foster must resubmit to the Delaware clinical hygiene exam and her license would be issued contingent on a passing exam score. By unanimous vote, the motion carried.

Ms. Foster was present for the Board's deliberations and public vote. Ms. Singh questioned if Ms. Foster was agreeable to the Board's terms. Ms. Foster stated that she would retake the Delaware clinical hygiene exam. Ms. Singh stated that Ms. Foster would receive a final order from the Board. Ms. McAtee stated that Ms. Foster should contact the Division of Professional Regulation for January examination details.

The hearing concluded at 4:16 p.m.

#### Continued Discussion on Advertising and Ownership

Dr. Jones stated that he had researched the topic and came across the ADA policy on Ownership of Dental Practices Employment of Dentists and Interference with the professional judgment of a dentist. Most states required that a dental practice must be owned by a dentist, while some states allowed corporations to own dental practices. Dr. Jones found that twelve states allowed a person or legal entity to participate in the ownership of a private dental practice. Ms. Singh reviewed the Board's Rules and Regulations and Statute and felt comfortable with the way it was written. Ms. Singh stated that under the Board's statute section 1171(b) covered advertising and in addition it was repeated throughout the Board's Rules and Regulations that the practice of dentistry stated that you needed a dental license to practice dentistry. After discussion, the Board agreed to table the discussion since Dr. McAllister was not present for the meeting.

#### Continued Discussion on Unprofessional Conduct

Ms. McAtee stated that back in March Dr. Pam Zickafoose, Executive Director of the Nursing Board, had prepared an unprofessional conduct list and that Ms. Singh had drafted the list into a final draft that

the Board needed to review. After discussion, Dr. Lenz made a motion, seconded by Dr. Bunting, to approve the proposed unprofessional conduct definitions draft as presented. By unanimous vote, the motion carried. Ms. Singh stated that she would create an order for submission into the Register of Regulations and the Rules and Regulations hearing would be held at the October 2013 meeting.

Order for Dr. Robert M. Blitzer

The Board reviewed and signed the Board Order for Dr. Robert M. Blitzer.

**NEW BUSINESS**

**RATIFICATION OF LICENSES/PERMITS ISSUED BY DPR SINCE LAST BOARD MEETING**

Dentists

Dr. Lenz made a motion, seconded by Ms. Madden, to ratify the dental licensure of Philip Oliver Sels, Katherine Mary Townsend, Phillip J. Louie, Hayoung Lim, Daniel A. Luckenbaugh, Nicholas J. Alcorn, Eric W. Spencer, Sara M. Bevan, and Aesha Chaudhry. By unanimous vote, the motion carried.

Dental Hygienists

Ms. Madden made a motion, seconded by Dr. Bunting, to ratify the dental hygiene licensure of Jessica Munoz-Romero, Chelsea M. Fahey, Blanca F. Luna-Lopez, Amy L. Coy, Robin Anne Cook, Gina Marie Carnevale, Laura J. Baker, Terri A. Douglass, Jill M. Guerrazzi, Andrea M. Vari, Kevin Michael Toussaint, Dawn N. Dallam, Elizabeth W. Evans, Aften D. Edwards, and Carolyn F. Sanders. By unanimous vote, the motion carried.

Dental Limited – Residents

Dr. Jones made a motion, seconded by Dr. Lenz, to ratify the dental limited-resident licensure of Jeffery S. Bartoshesky and Joseph T. Facciolo. By unanimous vote, the motion carried.

Restricted Permit I - None

Restricted Permit II

Dr. Lenz made a motion, seconded by Ms. Madden, to ratify the restricted permit II licensure of John Battista Fontana III and Phillip J. Louie. By unanimous vote, the motion carried.

Unrestricted Individual Permit

Ms. Madden, made a motion, seconded by Dr. Bunting, to ratify the unrestricted individual permit licensure of Douglas Ditty and Franklin Pancko. By unanimous vote, the motion carried.

Review of Application for Licensure

Bruce Fay – Restricted Permit I

Ms. Singh stated that under Board Rule 7.4.4 the Board may reevaluate the credentials, facilities, equipment, personal, and procedures of a licensed dentist that had previously held a permit or authorization from the Board to determine if he or she was still qualified to have such a permit or authorization. If the Board determined that the dentist was no longer qualified the Board could refuse or revoke the authorization or permit.

Rule 7.4.4 Re-evaluation: The Board may at any time re-evaluate credentials, facilities, equipment, personnel and procedures of a licensed dentist who has previously received a written authorization or permit from the Board to determine if he/she is still qualified to have such written authorization. If the Board determines that the licensed dentist is no longer qualified to have such written authorization, it may revoke or refuse to renew such authorization, after an opportunity for a hearing is given to the licensed dentist.

Ms. Singh stated that under Board Rule 7.4.4 the Board was free to discuss if there was a basis to deny the restrictive permit I application of Dr. Bruce Fay and if the Board was not comfortable with him holding a permit then they were within their right to propose to deny the application. After discussion, Dr. Lenz made a motion, seconded by Dr. Jones, to propose to deny the restrictive permit I application of Dr. Bruce Fay. By unanimous vote, the motion carried.

## **REVIEW HEARING OFFICER RECOMMENDATIONS**

### **FINAL DENIAL FOR LICENSURE**

#### **REVIEW OF DRAFT FORMS FROM THE DIVISION OF PROFESSIONAL REGULATION**

##### **Provisional License Application**

The Board reviewed the application draft for the provisional license, which was a newly created license type. After discussion, Dr. Jones made a motion, seconded by Dr. Mercer, to approve the provisional license application. By unanimous vote, the motion carried.

##### **Continuing Education Approval**

The Board reviewed the continuing education approval draft application. Ms. McAtee stated that the Board never had a continuing education approval application however, the Division would like the Board to have one on the website incase a course did not fall into something that was already approved. After discussion, Dr. Bunting made a motion, seconded by Dr. Jones, to approve the continuing education approval application. By unanimous vote, the motion carried.

## **COMPLAINT UPDATES**

### **New Complaint Assignments**

- 09-16-13 Dr. Lenz
- 09-17-13 Ms. Madden
- 09-18-12 Re-assigned to Dr. Jones
- 09-19-12 Re-assigned to Dr. Jones

Dr. Lenz made a motion, seconded by Dr. Mercer, to ratify the complaint assignments as assigned. The motion carried unanimously.

### **Dismissed by the Division of Professional Regulation**

- 09-17-11
- 09-18-11
- 09-14-12
- 09-15-12

## **DISCIPLINE AND COMPLIANCE**

### **Marieve Rodriguez, DMD**

Ms. Singh stated that according to the final Board Order of Marieve Rodriguez, DMD that the Board may at its discretion appoint a professional member to approve and/or accept an auditor, and to overall oversee the respondents probationary components.

Dr. Lenz questioned what her license status was. Ms. Singh stated that her license suspension had been lifted and that she did not have to petition for the suspension to be lifted. Ms. Singh stated that she was now on probation for four years, and during probation she was to submit quarterly reports concerning current billing practices and procedures, complete six CPEs, three hours in ethics, and at least three CPE's in the general subject area of record-keeping, billing, documentation, or office-

management. She must provide copies of the CPEs to the Board when she requests to have her probation lifted. When she starts to use the Medicaid Program again she will have her billing practices monitored by a Board approved auditor at her expense. A professional member from the Board would need to approve the auditor. After discussion, Dr. Jones made a motion, seconded by Dr. Bunting, to select Dr. Lenz as the Board contact for Dr. Rodriguez. By unanimous vote, the motion carried.

### **CORRESPONDENCE**

### **OTHER BUSINESS BEFORE THE BOARD**

### **PUBLIC COMMENT**

There was no public comment.

### **EXECUTIVE SESSION**

### **NEXT MEETING**

The next meeting will be October 17, 2013 at 3:00 p.m. in Conference Room A located on the second floor of the Cannon building at 861 Silver Lake Boulevard, Dover, DE.

### **ADJOURNMENT**

There being no further business to discuss, Dr. Bunting made a motion, seconded by Ms. Bruhl, to adjourn the meeting at 6:00 p.m. By unanimous vote, the motion to adjourn carried.

Respectfully Submitted,



Amanda McAtee  
Administrative Assistant II

*The notes of this meeting are not intended to be a verbatim record of the topics that were presented or discussed. They are for the use of the Board members and the public in supplementing their personal notes and recall for presentations.*